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Office of the Secretary
Federal Communications Commission
Washington, D.C. 20554

Re: ET Docket No. 93-7, FCC 93-495,
In the Matter of Implementation
of Section 17 of the Cable
Television Consumer Protection
and Competition Act of 1992;
Compatibility Between Cable Systems
and Consumer Electronics Equipment;
Notice of Proposed Rule Making

INTRODUCTION

Section 624A(b) of the 1992 Cable Act requires the FCC to report to Congress and then to issue regulations to ensure compatibility between consumer electronics equipment and cable systems, in consultation with representatives of the cable and consumer electronics industries. Unfortunately, no one seems interested in soliciting comments from those ultimately affected by such regulations--the lowly cable subscriber.

I am a subscriber to one of the largest cable systems in the country, Time Warner's Manhattan cable television system (hereinafter referred to as "MCTV"), which serves the lower half of Manhattan, plus Roosevelt Island, in New York City, and has 275,000 subscribers, of which about only 5,000 subscribe to just the basic tier. Until a few years ago, there was only one level of service, plus several premium channels, such as, HBO and Cinemax. In fact, it was only because of a subscriber lawsuit that MCTV finally added Bravo as its first non-Time entertainment premium channel. And only a large-scale lawsuit by Viacom ultimately led to Showtime and The Movie Channel being added to the system. The Manhattan cable systems are more fully discussed in Appendix I of the FCC's Report to Congress, **Consumer Electronics and Cable System Compatibility.** Let me note an error that appears throughout the Compatibility Report: unlike VCRs, which use output channels 3 or 4, converter boxes use output channels 2 or 3.

In anticipation of reregulation, MCTV raised its rates on December 1st of each year by $1.00 a month. The one exception was when its franchise was up for renewal. MCTV passed up its usual December 1st annual increase of $1.00 a month, only to raise rates by $2.00 a month the following year. And instead of raising rates on December 1, 1992, MCTV waited until February 1, 1993 to raise rates by $1.00--after eliminating one channel.

The other action taken by MCTV to minimize the effects of reregulation was to implement tiering. The one class of service was now split into three tiers: Broadcast Basic, Standard, and Standard Plus. MCTV also implemented a charge of $9.00 for a converter box connected to a second television and $5.00 for that same converter box connected to a VCR. Thus, many of the compatibility problems that we find are a direct result of MCTV's attempts to minimize or avoid reregulation. MCTV has about 90,000 secondary connections. Those inflated converter box charges have been permanently passed on, by line 104 of FCC Form 393, to most of MCTV's 275,000 subscribers, to the tune of about $1.75 a month per subscriber.

PROPOSALS FOR EXISTING EQUIPMENT

MCTV currently offers the Jerrold Starcom VI and Impulse 7000 converter boxes, which offer limited programming. Although both converter boxes have many buttons on top of the unit, a remote is needed for certain features, including programming. Neither converter box has on-screen programming or accepts weekly programs, and both offer daily programs that operate seven days a week, unlike VCRs, where daily programs operate Monday through Friday. MCTV refuses to offer the Jerrold CFT-2000, which has these features, and a Jerrold remote that controls the converter box and turns the television on and off. In theory, MCTV also offers the Jerrold Watch 'N Record converter box, which has two tuners, on-screen programming, etc. However, the Watch 'N Record converter is virtually impossible for a subscriber to get and was not on MCTV's FCC Form 393.

I think some sort of by-pass switch would be good for consumers. I have instituted my own by-pass switch, of sorts, using a hi-fi stereo VCR. I use the VCR's tuner for non-scrambled channels. For scrambled channels, I use the converter box in conjunction with the VCR's auxiliary inputs. This is possible because the Jerrold Impulse 7000 has audio and video output jacks on the back of the converter box. Unfortunately, the audio output jack of the converter box is mono--not stereo. A separate stereo decoder would be necessary to get stereo into the VCR's left and right audio inputs. This elaborate set-up allows me to program only the VCR to record non-scrambled channels; I have to program both the VCR and the converter box to record scrambled channels.

I have the same problem with the charge for higher-tech converter boxes that I have for existing equipment. The FCC did not do a very good job in unbundling equipment charges. These charges should be still further unbundled. MCTV encouraged subscribers to bring in their non-addressable converter boxes to its Cable Express locations, and to pick up and install the addressable converter box. There is no reason that a subscriber should not be allowed to pick up and install a new or additional converter box, without having to wait at home half a day for the cable company, and, in the case of MCTV, pay $40 or $45, plus tax, for the installation. Similarly, the subscriber should be given the option of receiving the converter box and the remote with carry-in service or no service at all. This is standard practice for the local telephone company, and should also be standard practice for cable companies, which are joining forces with phone companies at a rapid rate. Although the tone of the infamous August 20, 1993 memo of Barry Marshall of TCI was inappropriate, I see nothing wrong with a cable company making reasonable charges for certain services. However, if those services had previously been included in the rates, those rates must be lowered in order to charge separately for those services. I find it very hard to accept the inflated figures that MCTV has used on its FCC Form 393 for repairing converter boxes and remotes. My personal experience has been that this equipment needs little or no repairs. Only because MCTV gave me a defective, used converter box and gave one of my neighbors a defective, used remote did these pieces of equipment have to be replaced. These problems could have been avoided if MCTV had given us new equipment, or the defective equipment could have been exchanged at a Cable Express, thereby avoiding a truck roll. If MCTV would sell converter boxes (and remotes) at cost, plus a reasonable profit, as required by the 1992 Cable Act, the need for various levels of repair service would be minimized. As I interpret the 1992 Cable Act, it was the intent of Congress to make converter boxes, including descramblers, available for purchase by the consumer. Apparently the FCC believes that descramblers should not be available for purchase.

However, with proposals for service up to 750 MHz or 1 GHz and for digital compression, I am very concerned that the converter box that I lease or might buy from the cable company today could be made obsolete by that same cable company tomorrow, in its efforts to make 500 (mostly pay-per-view) channels available to unwary, and probably uninterested, subscribers.

I agree that all signals on the basic tier should not be scrambled--not just those required to be carried. MCTV does not scramble its basic channels, although I had two ugly incidents when MCTV scrambled a must-carry signal. The second time took the intervention of the general counsel of New York City's Department of Telecommunications and Energy to get the channel unscrambled. However, it is virtually impossible to subscribe to just the basic, unscrambled service without MCTV forcing the subscriber to take the converter box, for $3.22 a month, plus the remote, for $0.22 a month. I would also note that with the high price of electricity in New York City, the average subscriber pays about $2.00 a month to Con Edison to operate the converter box. Thus, many subscribers are unnecessarily paying about $5.50 a month for a converter box that they don't need. To make the basic tier more available, the FCC should require the cable companies to place the channels of the basic tier as low as possible on the frequency spectrum. In that way, subscribers with older equipment, such as, televisions and VCRs that go only to cable channel 36, would be able to get all channels on the basic tier without a converter box. This would be particularly easy for a system like MCTV, which remaps many channels to different channel numbers on the converter box. However, MCTV does not provide a listing of the cable ready channel locations of its basic tier. It also has placed seven channels required by its franchise--five municipal channels and two public access channels--as well as a must-carry channel, at the very upper end of its 550-MHz system, making those channels available on only the most expensive cable ready equipment, and with the worst possible transmission.

As Congress mandated, remote control devices should be made optional. I returned mine as soon as I received MCTV's notice about repricing (in my case, a $0.63 monthly increase; about 70% of MCTV subscribers received increases), effective September 1, 1993. However, twice during the week after I returned the remote, I was unable to use my universal remote, because MCTV had shut off my converter box's remote capability--something the 1992 Cable Act specifically prohibits. Each time it took an MCTV supervisor to restore the remote capability of my converter box, and each month I am billed $0.22 for the remote, and on the same bill, I am credited $0.22 for that same remote.

The issue of universal remotes is much more complex than it first appears. There are two types of universal remotes: learning and preprogrammed. Learning remotes, where the consumer teaches the universal remote to learn the converter box's instructions button by button, are now more commonly found as the remote that comes with a new television or VCR. In addition, there are still some universal learning remotes that can be purchased separately. However, preprogrammed universal remotes are becoming much more common. All the consumer has to do is look in the instruction manual that comes with the universal remote, find the name and model of the converter box, punch in the code, and the universal remote is all set. Unfortunately, many such universal remotes handle only the most basic converter box instructions. For example, the remotes for the Jerrold Impulse 7000 have 27 buttons; the remote for the Jerrold Watch 'N Record has even more. The converter box manufacturers are in the best position to determine which universal remotes work, and to what extent, with their converter boxes. The local cable companies should

take this information and determine which local stores and mail-order companies carry these remotes. Stores generally advertise only the cheapest--and simplest--remotes, so for those subscribers who want a more complete remote, the converter box manufacturers and cable companies should do the legwork. The cable companies should divide the list of universal remotes as to learning or preprogrammed. They should further subdivide the lists as to those remotes that handle all converter box functions, and those that handle less, and to what extent. For those cable systems that lease converter boxes without built-in timers, the systems should make special note of universal remotes that have built-in timers, to restore the programming capability of subscribers VCRs. Perhaps the FCC should also require cable companies to list those VCR brands and models with the VCR Plus+ that controls the converter box.

PROPOSALS FOR NEW EQUIPMENT

I have a problem with the proposal of consumer equipment capable of receiving up to 750 MHz or even 1 GHz. Many televisions and VCRs go up to approximately 650 MHz (cable ready channel 94, in addition to cable ready channels 95 through 99, which are sub-band channels A-5 through A-1) and some even go up to approximately 800 MHz (cable ready channel 125). However, very few cable systems are being built for even 750 MHz, while even fewer are being built for 1 GHz. Locally, a small portion of a Time Warner system in Queens, New York is experimenting with 1 GHz (Quantum service). And just as with digital compression, the objective is more pay-per-view channels and other unregulated services. My fear is that cable companies will make consumer equipment, including converter boxes purchased or leased by subscribers, obsolete, simply so that they can offer more unregulated services. Just as I have proposed having cable companies move the basic tier to channels 2 through 36, I would propose that any new services, such as, more pay-per-view channels, interactive services, etc., be available only above 550 MHz. And I would expand upon an FCC proposal: not only should the basic tier not be scrambled, but the basic tier channels and the programming tiers should not be digitally compressed. Let the cable companies do all of their compression above 550 MHz. I would also note that several video dial tone ("VDT") offerings by telephone companies, including U.S. West and Pacific Telesis, provide for both analog and digital channels. Most of the analog proposals have been in the area of 70 to 80 channels, which is approximately 550 MHz.

Perhaps after a period of ten years or so, compression might be permitted over the entire spectrum of 54 MHz to 1,002 MHz. This would be similar to the phase-in period for high definition television ("HDTV"). In fact, shouldn't there be coordination of expanded cable frequencies, cable component descramblers/decoders, Decoder Interfaces, and HDTV, to minimize consumer confusion in making choices of which equipment to buy for the long term? It isn't the (probably low) cost of the Decoder Interface that concerns me. It is the possibility of cable companies making existing televisions and VCRs obsolete or forcing subscribers to lease an expensive converter box that decompresses signals that troubles me.

"In the clear" delivery of all channels is ideal, and I believe that it is realistic with existing technology. Traps are practical for a large system like MCTV, with 275,000 subscribers, because there are only 5,000 basic tier subscribers that would have to be trapped. If MCTV moved all basic tier channels to channels 36 and below, it could trap channels 37 and above. MCTV could then offer its Standard tier, which is currently scrambled, in the clear. This would save many subscribers $3.44 a month for the converter box and remote, plus another $2.00 for electricity.

The state and city of New York have mandated high-security installation procedures, which have been upheld by the courts, to minimize theft of cable service, especially in apartment buildings. The real reason for scrambling is increased revenue for primary and secondary outlets through excessive equipment lease charges. Security is a secondary consideration. Under the FCC's regulations, basic tier subscribers pay the entire cost of converter boxes and remotes. Most of this cost should be allocated to programming tiers, premium channels, and pay-per-view channels. And I believe that cable companies should make both converter/descramblers and component descramblers available for sale, or for lease without service.

Interdiction presents technological and security problems. Addressable filters or taps might be a solution. However, I believe that cable companies don't want these or any other technologies that would permit a subscriber to add additional outlets that would have all basic and other tiers, as well as all premium channels. As an example, prior to September 1, 1993, MCTV did not charge if a subscriber had a premium channel on an additional outlet, although MCTV charged $5.00 or $9.00 a month, depending on whether that additional outlet was a VCR or second television. With rate regulation effective September 1, 1993, MCTV dropped the monthly charge for an additional outlet to a still very high $3.44, including a remote. It also tacked on an unregulated charge of $5.50 for premium channels on an additional television outlet and $1.50 for premium channels on a VCR outlet. Thus, the premium channel subscriber saw an overall savings of six cents ($0.06) a month. In view of the fact that cable companies pay absolutely nothing for programming for additional outlets, whether over-the-air channels, cable networks, premium channels, etc., I think it is unconscionable for cable companies to make these charges every month, even if there is no regulation of these charges under federal law. Now the cable companies are trying to further weaken the law by taking cable networks that were part of standard service and sell them on an a la carte basis. To me, such a la carte pricing is a violation of Section 623(h) of the law.

I cannot understand the great significance that the FCC is placing on having cable companies provide component descramblers/decoders and related equipment to subscribers without a separate charge for the equipment or installation. This would seem to encourage a repeat of what has been seen around the country in the wake of reregulation, and in particular, with MCTV, where 70% of subscribers have seen rate increases of about 3% to about 8%. However, subscribers who had multiple outlets saw their monthly charges fall. When the FCC regulated rates as of September 1, 1993, the excessive charge for converters and remotes were reduced from $9.00 a month (in most cases) to $3.44 a month. However, that excessive charge of $5.56 a month for about 90,000 converter boxes used as secondary outlets became part of the basic tier and Standard tier rates for MCTV's 275,000 subscribers, and added about $1.75 a month to the bill of most subscribers. As I read the FCC's proposal, the cable companies would have to purchase, install, and maintain a component descrambler/decoder for each television and VCR equipped with a Decoder Interface that a subscriber has. Thus, subscribers with multiple televisions and multiple VCRs equipped with Decoder Interfaces would place much more of a burden on the cable system in terms of acquiring, installing, and maintaining the component descramblers/decoders. But the cost of all of this acquisition, installation, and maintenance would be spread evenly among all subscribers, including those with no equipment with a Decoder Interface, possibly because they can't afford to purchase even one new television. I think you should go back to the drawing boards on this one.

John Fitzgerald